

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600
(www.co.mo.md.us/council/board.html)

Case No. A-5791

PETITION OF MICHAEL AND BEVERLY HELLER

(Hearing held September 11, 2002)

OPINION OF THE BOARD

(Effective date of Opinion, October 11, 2002)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.323(b)(2). The petitioners propose to construct a screened porch that requires a nine (9) foot variance as it is within sixteen (16) feet of the rear lot line. The required setback is twenty-five (25) feet.

Bruce Ecles, of Long Fence, appeared with the petitioners at the public hearing.

The subject property is Lot 25, Block 18, Wildmoor Manor Subdivision, located at 6305 Berkshire Drive, Bethesda, Maryland, in the R-90/TDR Zone (Tax Account No. 03126134).

Decision of the Board: Requested variance **denied**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to construct a screened porch on the existing rear yard deck.
2. The petitioner testified that her lot is the shallowest and smallest lot in the subdivision. The petitioners' lot is 9,004 square feet. See, Exhibit No. 7(e). The petitioner testified that the lot was improperly graded and has standing water problems. The petitioner testified that the screened porch would address the standing water problems, provide protection from insects and the elements, and soften the look of the property.
3. The petitioner testified that most lots in the subdivision back up to other rear yards, but that their lot adjoins the side yard of Lot 23. The record contains a letter of support from the neighbor on Lot 23. See, Exhibit No. 12. The petitioner testified that the deck could not be located elsewhere on the property.

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that the petitioners' lot has no exceptional topographical or other conditions that are not shared by the adjoining and neighboring properties. The Board further finds that the petitioners' lot is consistent in size with lots in the R-90/TDR Zone.

The proposed improvements made to address the standing water issues on petitioner's lot do not create a zoning reason for the grant of the requested variance. In addition, uniqueness or peculiarity for purposes of the evaluation of a proposed variance does not refer to the extent of improvements upon the property. (*Umerley v. People's Counsel*, 108 Md. App. 497, 506 (1996) citing *North v. St. Mary's County*, 99 Md. App. 502, 514 (1994)). None of the other factors cited by the petitioner create an exceptional condition peculiar to petitioner's property.

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements set forth in that section for the grant of a variance. Accordingly, the requested variance of nine (9) feet from the required twenty-five (25) foot rear lot line setback for the proposed construction of a screened porch is denied.

On a motion by Louise L. Mayer, seconded by Allison Ishihara Fultz, with Donna L. Barron, Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 11th day of October, 2002.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.